IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 34

TIMES FILM CORPORATION,

Petitioner,

v.

CITY OF CHICAGO, RICHARD J. DALEY and TIMOTHY J. O'CONNOR,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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It is admitted by Respondents that the issue here is: Does prior censorship of motion pictures clash with the First Amendment guarantees, as made applicable to the states through the Fourteenth?

Respondents cannot cite a single instance in which this Court has acted in other fashion than to invalidate prior censorship of speech. There is no such instance in our judicial history—even in Colonial days speech was not subjected to the imprimatur of the censor. Our Brief is interspersed with some of the great array of cases which stand for the proposition that censorship is indeed an ideology foreign to our system.

As this Court has held repeatedly that motion pictures fall under the protective scope of the First Amendment and the *general* rules pertaining thereto apply, it follows that Chicago cannot erect a censor's barrier between the motion picture as a form of speech, and the public. Such a barrier must tumble down irrespective of the form of the speech.

Respondents seek to base their Big Brother role on the totally unsubstantiated assumption that censorship is an "effective" remedy. A mere perusal of the Record in *Times Film Corporation* v. *City of Chicago*, 355 U. S. 35 (1957), which sheds "light" on the actual operation of Respondents' board, can easily lead to the opposite conclusion, that censorship as a remedy is most inept. The degree of "effectiveness" of a remedy is not, of course, determinative of its constitutionality.

Respondents state that we seek our constitutional guarantee to exhibit "what we please" as long as we "like it" under the "guise" of freedom. We submit that the issue as to whether speech is an absolute is a different one from the question here before the Court. Our Brief (pp. 30, 31, 35) is in fact replete with references to other methods of control, all less harsh than out-and-out censorship. Forty-six of our states and the vast majority of our communities rely on statutes of subsequent enforcement to deal with obscenity and anti-social conduct. In Chicago, a "permit" pursuant to the ordinance does not immunize the holder against the operation of the Illinois Penal Code. *Is reliance on our traditional judicial processes the "moral debasement" to which Respondents refer?*

We submit that the invalid censorship accomplishes but *one* thing: it chokes off the moving picture as one of the communicating arts in Chicago, a great city which has been traditionally identified with the arts. We must, therefore, reject Respondents' plea for "peaceful coexistence". There can be only the demise of the censor here, lest free speech perish in Chicago.

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